

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2005-000904-001 DT

02/16/2006

COMM. LISA ANN VANDENBERG

CLERK OF THE COURT
L. Rasmussen
Deputy

FILED: 02/17/2006

STATE OF ARIZONA

JAMES D NEUGEBAUER

v.

TARIF MOUNIR JABER (001)

TARIF MOUNIR JABER
10827 E BUTHERUS DR
SCOTTSDALE AZ 85255

REMAND DESK-LCA-CCC
SCOTTSDALE CITY COURT

RECORD APPEAL RULE / REMAND

Lower Court Case No. PR200525887

On September 9, 2005, the Scottsdale City Court issued a Default Judgment against Tarif Mounir Jaber in the amount of \$256.00. This judgment arises out of an Arizona Traffic Ticket and Complaint, no. 05033500, which was believed to have been personally served on the Defendant Tarif Mounir Jaber ("Appellant") on August 6, 2005 and his subsequent failure to appear before the trial court on September 6, 2005.

On September 14, 2005, the Defendant filed a Motion to Set Aside Default. On that same day, the trial court held a hearing on the Motion. After the hearing, the trial court affirmed the Default Judgment. The Defendant, having filed a notice of appeal, now brings this matter before this court.

The first issue before this court is whether service of process upon the Defendant was sufficient to give the trial court jurisdiction over him. As the Arizona Supreme Court discussed in *Safeway Stores, Inc. v. Ramirez*, personal jurisdiction must be established through service prior to issuing a default.¹ The Court noted the object of service and notice principally is to give a party notice of the proceeding against him, so that he may be afforded an opportunity to appear

¹ 99 Ariz. 372, 409 P.2d 292 (1965).
Docket Code 512

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before and to be heard by the court in his own defense. "It is this notice which gives the court jurisdiction to proceed."²

In the case at hand, the Defendant argues that service was not satisfied. Initially, the Defendant erroneously claims that the State failed to complete service because the Defendant never signed for the Traffic Ticket and Complaint. As the trial court pointed out, this argument ignores the provisions of Arizona Rules of Civil Procedure, Rule 4.1 (d), which states:

Service upon an individual from whom a waiver has not been obtained and filed, other than those specified in paragraphs (e), (f) and (g) of this Rule 4.1, shall be effected by delivering a copy of the summons and of the pleading to that individual personally or by leaving copies thereof at that individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the pleading to an agent authorized by appointment or law to receive service of process.

However, the Defendant also argues that service was not perfected as described in Rule 4.1(d). He indicated to the trial court that he never received the Complaint at his residence as described in the Affidavit of Service. However, given that the day of the hearing was the first time the Defendant had seen the Affidavit, he was unable to provide any documentation of his assertions.

The Affidavit of Service, the only proof submitted by the State, states, "Then Tarif Mounir Jaber drove up as I was leaving. He to refused to accept the papers. I had to secure the papers to the door."³ However, Appellant's Appeal Memorandum provides undisputed documentation that the Appellant was out of the country at the time of the alleged service. Given the fact that this evidence contradicts the only evidence of service presented, this court finds that proof of service had not been satisfied at the time of the Default Judgment.

IT IS THEREFORE ORDERED vacating the Default Judgment of \$256.00 issued on September 9, 2005 in this matter.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale City Court for a trial on Arizona Traffic Ticket and Complaint no. 05033500 and for all further appropriate proceedings.

² *Id.* at 379, 297, *citing* 42 Am.Jur. §3.

³ Assuming the "papers" included the Complaint as well as a court document summoning the Defendant to appear at a specific time and location on September 6, 2005, if the facts described in the affidavit were undisputed, service under Rule 4.1(d) would have been satisfied.